

Committee on Superior Court

MINUTES

Friday, October 3, 2003 - 9:30 a.m. to 2:30 p.m.
State Courts Building
1501 W. Washington Conference Room 119A & B
Phoenix, AZ

MEMBERS PRESENT:

Honorable Silvia Arellano
Mr. K. Kent Batty
Honorable James E. Chavez
Ms. Deborah Dyson
Honorable Charles V. Harrington
Honorable Bethany G. Hicks
Honorable Cathy Holt
Honorable R. Douglas Holt
Honorable Michael K. Jeanes
Honorable Kirby Kongable

Honorable Kenneth Lee
Honorable Denise I. Lundin
Honorable Margaret Maxwell
Honorable Stephen F. McCarville
Honorable Leslie Miller
Honorable Fred Newton
Honorable Emmet J. Ronan
Honorable James A. Soto
Honorable Nanette Warner
Mr. Charles W. Wirken

MEMBERS ABSENT

Honorable Norman J. Davis
Honorable Pat Escher
Honorable Gloria J. Kindig
Mr. Gary Krcmarik

Mr. Marty Krizay
Honorable Barbara Mundell
Honorable Dale Nielson

GUESTS:

Mr. Bob James
Mr. David Benton
Ms. Page Gonzales
Mr. Todd Adkins
Honorable Paul Katz
Mr. Kenneth Law
Mr. Steven Partridge
Mr. Peter Keifer

Mr. Gene Guidas
Mr. Barry Brody
Ms. Joan Tobin
Mr. Robert Dauber
Ms. Nancy Swetnam
Ms. Jennifer Greene
Mr. Robert Roll
Mr. Eric Carlson

STAFF:

Ms. Susan Pickard

Ms. Isabel Gillett

REGULAR BUSINESS

Welcome and Opening Remarks Hon. Fred Newton

Judge Fred Newton, Chair, called the meeting to order at 9:42 a.m. He welcomed new and returning members and thanked former members for their dedication and valuable input. All in attendance introduced themselves.

New:

Presiding Judge Dale Nielson
Navajo County

Presiding Judge James Soto
Santa Cruz County

Judge Emmet Ronan
Maricopa County

Judge Cathy Holt
Maricopa County

Mr. Kent Batty
Court Administrator in Pima County

Returning:

Presiding Judge Kirby Kongable
Yuma County

Presiding Judge Nanette Warner
Pima County

Judge Silvia Arellano
Maricopa County

Judge James Chavez
Mohave County

Judge Kenneth Lee
Pima County

Former Members:

Presiding Judge Raymond W. Weaver
Judge Brian Ishikawa
Mr. Marcus Reinkensmeyer
(Each has received letters and certificates of appreciation from the Chief Justice)

Approval of Minutes from June 6, 2003 Meeting Hon. Fred Newton

The minutes for the June 6, 2003 meeting were previously distributed electronically. Revisions and corrections received from members prior to the meeting were incorporated by staff and redistributed.

MOTION: Judge Maxwell moved to approved the minutes for June 6, 2003 as redistributed. Seconded. Passed unanimously. COSC-03-010.

BUSINESS ITEMS/POTENTIAL ACTION ITEMS

Domestic Violence Forms **Mr. Bob James**
Representing the DV Forms Workgroup of the Committee on the Impact of Domestic Violence and the Courts (CIDVC), Mr. James presented two redrafted domestic violence forms (the General Petition and the Guide Sheet) for COSC approval. Minor changes to the forms were suggested by the members.

MOTION: Mr. Jeanes moved to approved the forms with the DV Forms Workgroup taking into consideration the changes that were suggested by this committee. Seconded. Passed unanimously. COSC-03-011.

2004 Legislative Proposals **Mr. David Benton, Ms. Page Gonzales, Mr. Todd Adkins**
Votes indicated: Include - Not Include - Option A - Option B

04-03 Property Tax Appeal Time Limit (6th in order of importance)

- Eliminates the 270-day time period set forth in A.R.S. § 42-16212 within which the court must hear an appeal from a decision regarding valuation of classification of property.
- On hand to comment and answer questions were Judge Paul Katz, the proposer, and proponents Mr. Kenneth Law, Office of the Attorney General and Steven Partridge, Fennemore Craig PC.
- Discussion: None.

The committee voted to include the proposal in the legislative package, 20-0-0-0

04-04 Orders of Assignment

- Grants authority to the superior and limited jurisdiction courts to issue orders of assignment that require an employer(s) of a person with a court-ordered payment to withhold a portion of the person's wages and transmit the money to the issuing court or other specified agency.
- Mr. Bob James, on behalf of Judge Colin Campbell, the proposer, was on hand to comment and answer questions.
- Discussion: Multiple orders of assignment, possible conflicts with Federal Title IV-D, prioritization of payments, impact on the FARE Program implementation.

The committee voted to not include this proposal in the legislative package. 7-13-0-0

04-05 Mental Health Experts (1st in order of importance)

- Changes from mandatory to permissive the requirement that one of two mental health experts appointed by the court to conduct a competency examination be a psychiatrist.
- Mr. Peter Keifer, proposer, Mr. Gene Guidas and a representative of the Public Defender's Office, were on hand to comment and answer questions.
- Discussion: Psychologists' access to medical record if a person is being treated by a psychiatrist.

- Option A - If either party or their counsel requests a psychiatrist, the court would be obligated to make that appointment.
- Option B - This option was not defined.

The committee voted to include this proposal in the legislative package. 17-0-1-1

04-06 Preparatory Release of Inmates Sentenced to Probation (3rd in order of importance)

- Allows an inmate who the court sentenced to probation, in lieu of community supervision, to be released at the discretion of the Director of the Department of Corrections up to 90 days prior to the end of the prison sentence in the same manner as inmates who are sentenced to imprisonment and community supervision.
- Discussion: Prisoners retaining their right to early release credits in probation scenarios, equal treatment, loss of screening service of community supervision and possible cost issues.

The committee voted to include this proposal in the legislative package. 18-2-0-0

04-07 Judges' Retirement Age

- Extends from 70 to 75 years of age the mandatory retirement age for justices and judges of courts or record prescribed by Article VI.
- Discussion: DROP proposal, reaching full retirement if appointed at age 51.

The committee voted to not include this proposal in the legislative package. 8-11-0-0

04-08 Forcible Entry and Detainer (5th in order of importance)

- Changes from superior to justice court the location at which parties appealing a judgment in forcible entry and detainer cases (pursuant to A.R.S. § 12-1179) are required to file a supersedeas bond and make periodic rent payments during the appellate process.
- Discussion: None.

The committee voted to include the proposal in the legislative package. 20-0-0-0

04-10 Drug Court Appropriation (4th in order of importance)

- Appropriates an unspecified amount from the state general fund to the Administrative Office of the Courts in FY04 and FY05 for the purpose of funding juvenile and adult drug courts.
- Discussion: Federal funding limited or terminating, statistical data evaluating Pima County Drug Court, state budget constraints.

The committee voted to support the concept for inclusion in the legislative package. 17-3-0-0

04-11 MVD Registration Holds (7th in order of importance)

- Expand authority to refuse vehicle registrations for delinquencies in paying restitution, fines, surcharges, penalties or assessments.
- Discussion: Multiple parties on the registration, expanding to non-traffic, affect on revenue.

- Option A: Not include in the legislative package unless amended to address concerns regarding multiple parties on the registration.

The committee voted in support of Option A of the proposal. 4-4-10-0

04-12 TIP on Probation Absconder Location (2nd in order of importance)

- Utilizes the Tax Intercept Program (TIP) to assist probation departments locate absconders.
- Discussion: Impact on FARE Program implementation, resource allocations and cost impact.

The committee voted to include the proposal in the legislative package. 17-2-0-0

04-13 Deferred Retirement Option Plan (DROP)

- Creates a deferred retirement option plan (DROP) for members of the Arizona Retirement System, Correctional Officer Retirement Plan, and the Elected Official Retirement Plan.
- Discussion: Revenue/cost neutrality
- Option A: Include only if demonstrated to be revenue neutral.

The committee voted to not include the proposal in the legislative package. 3-9-7-0

Pro Tem Judges Domestic Relations

- If parties of a family law dispute select and agree to the appointment of a judge pro tem, the trial judge shall assign that action to the agreed upon pro tem. The pro tem shall be compensated by the parties in an amount approved by the court.
- Mr. Barry Brody was present to comment and answer questions.
- Discussion: Court reporter; clerk and facility responsibility; private judging; pilot program; experience; exhibits, minute entry and records for purposes of appeal; courtroom clerk resources; possible loss of attorneys willing to pro tem without payment; security issues holding hearings in attorney.

MOTION: Judge Arellano moved that we approve the proposal. Seconded.

AMENDED MOTION: Judge Arellano amended the motion to support the proposal as a pilot program in Maricopa County. Seconded. Passed unanimously. COSC-03-012.

Justice Court Case Amount Increase

- Amend the constitution to increase the dollar amount limit for the jurisdiction of the justice courts from \$10K to \$20K.
- Discussion: Judicial productivity credits, judicial officers training and caseload shift.

MOTION: Judge Arellano moved to table this discussion until proposed language is available. Seconded. Passed Unanimously. COSC-03-013.

Credentialing of Mediators Ms. Joan Tobin, Mr. Robert Dauber

Ms. Tobin and Mr. Dauber presented the Report on the Credentialing of Mediators as sent forth by the Committee on Alternative Dispute Resolution for comment. The report contains proposed guidelines for courts to credential qualified mediators. The two main areas of focus are training and experience requirements. Ms. Tobin highlighted the point that care was taken to build in flexibility for each of Arizona's counties. Comments should be forwarded to Ms. Tobin within the next month. **Informational only.**

ACJA § 7-201 and 7-202 Ms. Nancy Swetnam

Section 7-201 sets forth the general certification procedures and disciplinary processes for the Confidential Intermediary Program, Defensive Driving Program and the Fiduciary Program.

Ms. Swetnam pointed out the following areas at issue: the use of the language "probable cause" versus "reasonable cause," policies and procedures regarding compliance audit reviews and mandated complaint resolution time frames.

MOTION: Judge Arellano moved to approve ACJA § 7-201 with the amendments as recommended by staff. Seconded. Passed unanimously. COSC-03-014.

Section 7-202 sets forth the general requirements for certification and regulation of fiduciaries.

Ms. Swetnam pointed out the following areas of controversy between the Fiduciary Commission and staff: the definition and responsibilities of principal, denial of renewal of certification, pictorial inventory requirement.

Concern was expressed that a representative of the Fiduciary Commission was not present to present their side. Ms. Swetnam assured members that a representative planned to be available when this topic is presented at AJC on October 15.

MOTION: Judge Arellano moved to approve ACJA § 7-202 with the amendments as recommended by staff. Seconded. Passed 16-2-1 COSC-03-015.

FARE Program Update Ms. Nancy Swetnam

The primary goal of the FARE Program is enforcing court orders. The FARE Program is currently being rolled out across the state in seven limited jurisdiction "pioneer courts" in four communities. Local courts, AOC staff, MVD and representatives from Affiliated Computer Services, Inc. (ACS), the private vendor selected as the business partner in this endeavor, meet regularly to work through the process.

Ms. Swetnam stressed that backlog processing services, a component of the FARE Program, are currently available to all courts, not just pioneer courts, and include: reminder notices, delinquency notices, pay by web, pay by Interactive Voice Response (IVR) system, credit card, debit card, installment payment programs, credit bureau checking, skip tracing, referral to the Traffic Ticket Enforcement Assistance Program and referral to the Tax Intercept Program (TIP). **Informational only.**

Revisions to Trial Jury Management Code Ms. Jennifer Greene

The Jury Patriotism Act of the last legislative session was aimed at improving representativeness of trial juries and making jury service more convenient, rewarding and difficult to avoid. ACJA § 5-203 has been amended to incorporate the Act. Additionally, requirements of Rules 18.3 and 18.6 of the Arizona Rules of Criminal Procedure concerning supreme court approval of juror biographical questionnaires and juror orientation handbooks, which are seen as more appropriate for inclusion in the Arizona Code of Judicial Administration than the Rules of Criminal Procedure, have been incorporated to allow for later removal from Rules.

MOTION: Mr. Batty moved to approve the proposed revision to ACJA § 5-203. Seconded. Passed unanimously. COSC-03-016.

Lengthy Trial Fund Implementation Ms. Jennifer Greene

The Lengthy Trial Fund is designed to pay extra compensation to those jurors who serve on trials lasting more than ten days. Implementation of the statutory scheme requires that the supreme court adopt rules for administration of the fund and establish a new superior court filing fee, the revenue from which would be used to reimburse counties as they pay jurors the extra compensation permitted by A.R.S. §§ 12-115 and 21-222.

The Lengthy Trial Fund Fees Workgroup recommends that the filing fee be set at \$8 and applied only to complaints, answers, counter-claims and motions to intervene filed in civil cases. Setting the fee at this level is expected to raise over \$451,968 annually.

The Lengthy Trial Fund Logistics Workgroup has drafted two forms; one for use by jurors who wish to be paid from the fund and the other for use by jury commissioners who seek reimbursement from the supreme court for the extra payments made to eligible jurors. Additionally guidelines for jury commissioners to use in notifying jurors about the availability of this money, determining juror eligibility and seeking reimbursement have been developed.

Concern was raised regarding fees collected in rural counties, which hear fewer lengthy trials, being used to subsidize jurors in Maricopa and Pima Counties.

MOTION: Judge Arellano moved to approved the proposed recommendations and forms. Seconded. Passed unanimously. COSC-03-017.

Rule 10.2 Ms. Jennifer Greene

Ms. Greene reviewed the history of Rule 10.2. While not going through the Report of Statistical Survey of Rule 10.2 Arizona Rules of Criminal Procedure Notice of Change of Judge, as provided to the committee, she did note in the superior court there was quite a bit of variation in looking at the courts; some reported increased filings while others reported a decreases. The Court will be considering the experimental rule on its January Rules Agenda, which means committee members have until December 1, 2003 to file comments on their court's experience with Rule 10.2. **Information only.**

Holder of the Record Mr. Robert Roll

In evaluating the process of transferring data from the Court Protective Order Registry (CPOR) to the Law Enforcement Protective Order Registry (LPOR) data quality issues have been identified. In some cases, the hard copy sent to the Holder of Record does not match the electronic version transmitted from CPOR, in other cases events are occurring out of sequence (e.g. the order is shown as having been served, but information has not been entered indicating the order was issued by the court). The Holder of Record will only accept electronic versions that match the hard copies. If a record is not accepted it will not be sent to NCIC nor will it be available to local law enforcement. The Holder of Record would like additional access to LPOR to make the electronic copy reflect the hard copy.

MOTION: Ms. Lundin moved to recommend approval to allow the Holder of Record the ability to update protective order information which is sent to NCIC. Seconded. Passed unanimously. COSC-03-018

Court Protective Order Repository - CPOR Hon. William O'Neil

Judge O'Neil was unable to present this topic at this meeting. The topic will be placed on the agenda for the November meeting.

Report of the Court Security and Emergency Preparedness Committee . . Mr. Eric Carlson

The Committee on Court Security and Emergency Preparedness provided the committee with their distribution draft report which has two parts; 1. court emergency preparedness planning, including required basic elements and 2. recommendations/guidelines for court security. The committee is seeking comments on the report, suggestions on how to document that the planning has been accomplished and suggested timetables for meeting the guidelines. Comments may be sent to Mr. Carlson or Paul O'Connell, committee chair and Superior Administrator Court in Pinal Court. **Informational only.**

Next Meeting Hon. Fred Newton

November 21, 2003
10:00 a.m. - 3:00 p.m.
Arizona State Courts Building
Conference Rooms 119 A&B

Good of the Order/Call to the Public Hon. Fred Newton

A call for public comment was made. No comments were made

The meeting was adjourned at 2:45 p.m.

Respectfully submitted,
Susan Pickard
COSC Staff